UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: 40 LAKEVIEW DRIVE, LLC, Debtor.	Case No. 15-14692 (VFP) Chapter 7
JAY L. LUBETKIN, Chapter 7 Trustee for 40 LAKEVIEW DRIVE, LLC, Plaintiff, v. IRFAN SHEIKH and QUINCY WONG, Defendants.	Adv. Pro. No. 16-01165 (VFP) Hearing Date: February 13, 2018

BRIEF IN SUPPORT OF TRUSTEE'S MOTION TO INCREASE PUNISHMENT FOR HAROLD PETZOLD, JR.'S AND QUICY WONG'S CONTINUING CIVIL CONTEMPT PURSUANT TO 11 U.S.C. § 105(a) AND BANKRUPTCY RULE 9020

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STATEMENT OF FACTS

As is set forth in more detail in the certification of Larry K. Lesnik submitted in support of the within motion, on November 14, 2017, an order was entered sanctioning Harold Petzold ("Petzold") and Quincy Wong ("Wong"). As confirmed by a certification previously filed with this Court as Dkt. No. 67-1, such order was served on Petzold and Wong but thereafter not complied with by such individuals. The Trustee then sought to hold both Petzold and Wong in civil contempt for such failure and on January 3, 2018, an Order was entered holding Petzold and Wong in civil contempt and directing them to pay $3,495.30 to the Trustee's counsel, none of which has been paid. Accordingly, there is no present alternative but to increase the punishment of Petzold and Wong for their continuing civil contempt through their incarceration until they have complied with all prior orders of this Court.

LEGAL ARGUMENT

INCARCERATION IS THE ONLY APPROPRIATE REMEDY FOR HAROLD PETZOLD, JR'S AND QUINCY WONG'S CONTINUING CIVIL CONTEMPT

In its decision in Matter of Grand Jury Impaneled, Jan. 21, 1975, 529 F.2d 543, 551 (3d Cir. 1976), while warning against visiting "Draconian" punishment upon a civil contemnor, the Third Circuit noted the court's power to both impose a fine or imprisonment "as suggested by the record" upon a party who has committed civil contempt. Importantly, the court further observed that:

> "If compliance is not forthcoming, the initial penalty may be increased, or a new penalty appropriate under the circumstances may be selected."

As has become painfully obvious over the past few months, absolutely no compliance with orders of this Court has been forthcoming from Petzold or Wong, nor can anyone reasonably expect that situation to change in the future. Rather, through their repeated failure to comply with the terms of orders, Petzold and Wong have more than adequately demonstrated their lack of respect for this Court and the Trustee justifying the additional punishment being sought by the Trustee.

Although the Court in In re Vaso Active Pharmaceuticals, Inc., 514 B.R. 416, 426 (Bankr. D. Del. 2014), concluded that the record in that matter did not justify incarceration of the party guilty of civil contempt, it nevertheless noted that incarceration may be appropriate as a sanction for civil contempt when "there is no reason to expect compliance with increased monetary sanctions, particularly if there has been a history of non-compliance with the court." No words could more accurately describe the conduct of Petzold and Wong during the past several months with respect to both the trial in the within matter and their refusal to comply with the Sanctions Order and Contempt Order.

As noted by the court in Vaso, other courts have not hesitated to incarcerate individuals in appropriate situations. In In re Duggan, 133 B.R. 671, 672 (Bankr. D. Mass. 1991), the court took note of what it termed a "protracted struggle" between the Trustee and the debtor who had refused to surrender certain items of property to the Trustee (a description that also fits Wong herein). As should be the case with Petzold and Wong, the Duggan Court indicated that there was no reason to expect that the debtor in that matter would comply with a monetary judgment (which Petzold and Wong have already proven that they will not do) and thus "Incarceration is therefore the only alternative." Id. As should be the case with Petzold and Wong, the Judge in Duggan conditioned such incarceration on compliance with prior orders of the court, meaning, essentially, that the contemnor would have the keys to the jail cell. The incarceration of Duggan was necessary to "promote the proper administration of this estate and not to punish the Debtor." Id. Likewise, incarcerating Petzold and Wong is necessary to preserve respect for the Court and the orders it enters.

In In re Maxair Aircraft Corp. of Georgia, Inc., 148 B.R. 333 (D.N.D. Ga. 1992), the court took note of the conduct of a party who continued to thwart a secured creditor's attempts to inspect and repossess collateral and then ordered the individual in question to be incarcerated in order to coerce him to comply with prior orders of the court. Again, it is necessary to incarcerate Petzold and Wong to compel their compliance with two orders imposing monetary sanctions against them. As the court noted in Maxair, the contemnor "carries the keys of his prison in his own pocket." Maxair, supra at 359. This would of course also be true of Petzold and Wong. Petzold and Wong have been repeatedly forewarned by the Trustee and his counsel that they would seek to incarcerate them if they did not comply with orders of this Court, but they have chosen to ignore such warnings and requests for cooperation time after time. Therefore, the time has come for Petzold and Wong to accept the consequences of their behavior.

CONCLUSION

For all of the reasons set forth herein, the Trustee respectfully requests the entry of an order incarcerating Harold Petzold, Jr. and Quincy Wong for their continued civil contempt.

DATED: January 11, 2018

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By: /s/ Larry K. Lesnik
LARRY K. LESNIK

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